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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/823,832

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Masatoshi Homan

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03/19/2008

SCULLY SCOTT MURPHY & PRESSER, PC

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EXAMINER

KASZTEJNA, MATTHEW JOHN

ART UNIT

PAPER NUMBER

3739

MAIL DATE

DELIVERY MODE

03/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/823,832

Applicant(s)

HOMAN ET AL.

Examiner

MATTHEW J. KASZTJANA

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-20, 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 11, 14 and 16 is/are allowed.
- 6) ☒ Claim(s) 1, 3-8, 10, 12, 13, 15, 17-20 and 23-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Notice of Amendment

In response to the amendment filed on December 14, 2007, amended claims 1, 3, 7, 12 and 17-19 and canceled claims 21-22 are acknowledged. The following new grounds of rejection are set forth:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-5, 17-20, 23 and 26-28 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,951,536 to Yokoi et al.

In regards to claims 1, 3 and 17-19, Yokoi et al. discloses a capsule endoscope apparatus having an illuminating device 108a for irradiating illuminating light in a body cavity, a switching device 161 which switches illuminating conditions of the illuminating light irradiated by the illuminating device, presets at least two different illuminating conditions and a switching order thereof in a state where the illuminating light has the same wavelength band, the at least two different illuminating conditions being a light-emitting amount or light emitting time, and automatically switches the illuminating conditions from a first illuminating condition corresponding to a first image acquisition cycle to a second illuminating condition corresponding to a subsequent image

acquisition cycle (see Fig. 30a-b); an image pick-up device 24a for sequentially picking up, in a state wherein the illuminating light has the same wavelength band, images of a subject, which is irradiated with illuminating light under the illuminating conditions which are different according to the switching by the switching device (see Col. 23, Lines 47-67); a setting device 109a which sets the light emitting amount; and a radio device 113a which transmits by radio waves image data obtained by the image pick-up device (see Figs. 1 and 29)

In regards to claims 4-5, Glukhovskiy discloses a capsule endoscope apparatus wherein the illuminating device comprises a white LED (see Col. 23, Lines 38-46) and wherein the illuminating device comprises an electroluminescence.

In regards to claim 20, Glukhovskiy discloses a capsule endoscope apparatus, wherein the illuminating device has a plurality of light-emitting elements at different arranging positions, and the switching device selects the light-emitting element which emits light from the plurality of light emitting element and changes the property of light distribution for the illuminating light (see Figs. 3-4).

In regards to claims 23 and 26-28, Glukhovskiy discloses disclose a capsule endoscope apparatus, wherein at least one of the at least two different illuminating conditions and the switching order thereof preset by the switching device is set to be changeable by a radio signal (see Fig. 2a).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8, 10, 12-13, 15 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,951,536 to Yokoi et al. in view of U.S. Patent Application Publication No. 2003/0117491 to Anvi et al.

In regards to claims 6-7 and 12, Yokoi et al. discloses a capsule endoscope apparatus having an illuminating device 108a for irradiating illuminating light in a body cavity, a switching device 161 which switches illuminating conditions of the illuminating light irradiated by the illuminating device, presets at least two different illuminating conditions and a switching order thereof in a state where the illuminating light has the same wavelength band, the at least two different illuminating conditions being a light-emitting amount or light emitting time, and automatically switches the illuminating conditions from a first illuminating condition corresponding to a first image acquisition cycle to a second illuminating condition corresponding to a subsequent image acquisition cycle (see Fig. 30a-b); an image pick-up device 24a for sequentially picking up, in a state wherein the illuminating light has the same wavelength band, images of a subject, which is irradiated with illuminating light under the illuminating conditions which are different according to the switching by the switching device (see Col. 23, Lines 47-67); a setting device 109a which sets the light emitting amount; and a radio device 113a which transmits by radio waves image data obtained by the image pick-up device (see Figs. 1 and 29). Yokoi et al. are silent with respect to a selecting device which extracts an image with a wide dynamic range from two or more pieces of image data obtained by

the image pick-up device. Avni et al. teach of an analogous capsule endoscope apparatus having an illuminating device 38 for irradiating illuminating light in a body cavity, a switching device which switches illuminating conditions of the illuminating light irradiated by the illuminating device (see Figs. 6-7), and automatically switches the illuminating conditions from a first illuminating condition 94 corresponding to a first image acquisition cycle (T-T1) to a second illuminating condition 96 corresponding to a subsequent image acquisition cycle (T1-T2); an image pick-up device 32 for sequentially picking up an images of a subject, which is irradiated with illuminating light under the illuminating conditions which are different according to the switching by the switching device (see Fig. 2 and paragraphs 0039-42 and 0074-0076); a selecting device which extracts an image with a wide dynamic range from the two or more pieces of image data obtained by the image pick-up device upon sequentially switching the two or more light-emitting amount or light-emitting time (see Fig. 13 and paragraphs 0152-157); and a radio device 34 which transmits by radio waves the image data obtained by the selecting device (see paragraph 0036). **In regards to claims 8, 10, 13 and 15,** Avni et al. disclose a capsule endoscope apparatus, wherein a luminance distribution of the image data is used as a comparison standard for extracting the image with the wide dynamic range by the selecting device (see paragraphs 0070-0074). It would have been obvious to one skilled in the art at the time the invention was made to use a selecting device to extract an image with a wide dynamic range in the apparatus of Yokoi et al. to provide higher quality images to the user as taught by Avni et al.

In regards to claims 24-25, Glukhovsky discloses disclose a capsule endoscope apparatus, wherein at least one of the at least two different illuminating conditions and the switching order thereof preset by the switching device is set to be changeable by a radio signal (see Fig. 2a).

Allowable Subject Matter

Claims 9, 11, 14 and 16 are allowed.

Response to Arguments

Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. KASZTEJNA whose telephone number is (571)272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. J. K./
Examiner, Art Unit 3739

/Linda C Dvorak/
Supervisory Patent Examiner, Art
Unit 3739

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